



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Small Claims Patent Court Study; Comment Request

AGENCY: Administrative Conference of the United States (ACUS).

ACTION: Notice.

SUMMARY: The U.S. Patent and Trademark Office (USPTO) is engaging ACUS to conduct an independent study of issues associated with and options for designing a small claims patent court. ACUS invites public comments on these issues as part of its study.

DATES: Comments must be received no later than [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by email at info@acus.gov (with “Small Claims Patent Court Comments” in the subject line of the message); online by clicking “Submit a comment” near the bottom of the project web page found at <https://www.acus.gov/research-projects/us-patent-small-claims-court>; or by U.S. Mail addressed to Small Claims Patent Court Comments, Administrative Conference of the United States, Suite 706 South, 1120 20th Street, NW, Washington, DC 20036. Commenters should not include information, such as personal information or confidential business information, that they do not wish to appear on the ACUS website. For the full ACUS public comment policy, please visit <https://www.acus.gov/policy/public-comment-policy>.

FOR FURTHER INFORMATION CONTACT: Kazia Nowacki, Attorney Advisor, Administrative Conference of the United States, 1120 20th Street, NW, Suite 706 South, Washington, DC 20036; Telephone (202) 480-2080; email knowacki@acus.gov.

SUPPLEMENTARY INFORMATION: The Administrative Conference Act, 5 U.S.C. 591-596, established the Administrative Conference of the United States. The Conference studies the efficiency, adequacy, and fairness of the administrative procedures used by Federal agencies and makes recommendations to agencies, the President, Congress, and the Judicial Conference of the

United States for procedural improvements (5 U.S.C. 594(1)). For further information about the Conference and its activities, see www.acus.gov.

A Small Claims Patent Court

Since at least the late 1980s, concerns have been raised that the high cost of patent litigation deters small- and medium-sized enterprises, including those owned by traditionally underrepresented groups, from seeking to enforce their patents. Policymakers, scholars, and organizations have studied whether a small-claims procedure is needed for resolving patent disputes. They have reached different conclusions and proposed different actions.

The Department of Commerce has also considered the possibility of a small claims patent court. Most recently, in December 2012, the USPTO issued a *Federal Register* notice requesting public comment on “whether the United States should develop a small claims proceeding for patent enforcement” (77 FR 74830 (Dec. 18, 2012)).

Given ongoing interest in the topic, USPTO has engaged ACUS to conduct an independent survey and analysis of issues associated with and options to consider in designing a small claims patent court. A report resulting from the study will ultimately be submitted to Congress and will address, among other topics, whether there is a need for a small claims patent court, the feasibility and potential structure of such a court, and the relevant legal, policy, and practical considerations in establishing a small claims patent court.

Specific Topics for Public Comment

ACUS welcomes views, information, and data on all aspects of a potential small claims patent court or small claims patent proceeding and its impacts. ACUS is also seeking specific feedback on the following topics:

1. Whether there is need for a small claims patent court;
2. The policy and practical considerations in establishing a small claims patent court;

3. The institutional placement, structure, and internal organization of a potential small claims patent court, including whether it should be established within the Article III federal courts, as or within an Article I court, or as an administrative tribunal;
4. The selection, appointment, management, and oversight of officials who preside over proceedings in a potential small claims patent court;
5. The subject-matter jurisdiction of a potential small claims patent court, whether participation in such proceedings would be mandatory or voluntary, and whether parties can remove cases to another administrative tribunal or federal court;
6. The procedures and rules of practice for a potential small claims patent court, including, as relevant, pleadings, discovery, and alternative dispute resolution;
7. The remedies that a potential small claims patent court would be able to provide;
8. The legal effect of decisions of a potential small claims patent court; and
9. Opportunities for administrative and/or judicial review of small claims patent court decisions.

Dated: April 28, 2022.

Shawne McGibbon,

General Counsel.